

## **REMARKS**

Reexamination and reconsideration of this application in view of the amendment to the claims and the following remarks is respectfully requested. By this amendment, claims 1, 5-6, 8 11, and 15 are amended; claim 20 is cancelled; and no new claims are added. After this amendment, claims 1-2, 4-9, 11-16, and 18-19 remain pending in this application. The Applicant suggests that the claims are now in condition for allowance or at least in better condition for appeal.

### **Response to Arguments Section**

Applicant would like to first address the Examiners remarks in the "Response to Arguments" section of the present Office Action.

(A) The Examiner asserts throughout the "Response to Arguments" section that the Applicant has failed to properly traverse the Examiner's statements of well known fact. The Examiner supports these assertions by stating:

Applicant's traversal regarding the limitation disclosing, "...wherein the transmitter is further for sending a portion of the refund directly to the user and keeping a remaining portion of the refund as a fee associated with the user" wherein the Examiner stated, "(Col. I Lines 47 - 52, 64 - 67) wherein it would have been obvious to one of ordinary skill in the art that the host system is in communication with the vendor and when a refund becomes available the host system will handle the making available of the refund to the consumer and credit the amount to the customer's account and wherein it is common sense that business have an associated fee for carryout said service" is insufficient.

A "traverse" is a denial of an opposing party's allegations of fact. The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1 .104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71,60 USPQ 239 (CCPA 1943). MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art. In view of applicant's failure to adequately traverse, the following are admitted prior art:

"wherein the transmitter is further for sending a portion of the refund directly to the user and keeping a remaining portion of the refund as a fee associated with the user"

The Examiner uses the above reasoning in response to the Applicants' other traversals of well-known fact statements submitted by the Examiner.

Applicant respectfully suggests that the Examiner is improperly applying court rulings in view of rules in 37 CFR. For Example, 37 CFR §1.104(d)(2) states:

When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

Furthermore, MPEP §2144.03 states "If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position." If, however, the Examiner's statements are based on facts within the personal knowledge of the Examiner, the Applicant respectfully requests that the Examiner support these references by filing an affidavit as is allowed under MPEP §707, citing 37 CFR 1.104(d)(2), and as specified in MPEP §2144.03.

Even further, MPEP §2144.03(B) and (C) state (**emphasis added**):

B. If Official Notice Is Taken of a Fact, Unsupported by Documentary Evidence, the Technical Line of Reasoning Underlying a Decision To Take Such Notice Must Be Clear and Unmistakable

\*\*In certain older cases, official notice has been taken of a fact that is asserted to be "common knowledge" without specific reliance on documentary evidence where the fact noticed was readily verifiable, such as when other references of record supported the noticed fact, or where there was nothing of record to contradict it. See *In re Soli*, 317 F.2d 941, 945-46, 137 USPQ 797, 800 (CCPA 1963) (accepting the examiner's assertion that the use of "a control is standard procedure throughout the entire field of bacteriology" because it was readily verifiable and disclosed

in references of record not cited by the Office); *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943) (accepting the examiner's finding that a brief heating at a higher temperature was the equivalent of a longer heating at a lower temperature where there was nothing in the record to indicate the contrary and where the applicant never demanded that the examiner produce evidence to support his statement). If such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241. The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice >so as to adequately traverse the rejection< in the next reply after the Office action in which the common knowledge statement was made.

C. If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 ("In the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2).

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the

traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.

As can be seen, the case law being cited in the MPEP clearly shows that an Applicant is only required to make a demand that the examiner produce evidence to support his statement. **Therefore, a demand of this nature is adequate to traverse the Examiner's statements of well-known fact, in which the Examiner is required to and has the burden to point to concrete evidence in the record or provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding.**

Accordingly, because the Examiner has failed to point to concrete evidence in the record or provide an affidavit or declaration the Examiner has failed to make a *prima facie* case of obviousness. Therefore, the rejection under 35 U.S.C. §103(a) should be withdrawn and the claims allowed.

**(B)** The Examiner states on page 12 of the present Office Action that:

On page 13 of 22 of applicant's remarks, the applicant states that McClung merely states on Col. 2 Lines 14—27 and 53 - 56:

In one aspect, the vendor (and/or host system or similar system) monitors competitors on a real time basis and provides the consumer at the vendor's location any better price available then at any competitor for the same item (or service)

However, the Examiner would like to make it clear on the record that no such quote was found within McClung and that the statement made above is only the applicant's interpretation/summary of only part of what McClung discloses on Col. 2 Lines 14-27 and 53-56.

Applicant respectfully points out that McClung clearly teaches "In one aspect, the vendor (and/or host system or similar system) monitors competitors on a real time basis and provides the consumer at the vendor's location any better price available then at any competitor for the same item (or service)" at col. 2, lines 19-23, which is included within col. 2, lines 14-27 cited by the Applicant. Applicant requests that the Examiner retract his statement that "the Examiner would like to make it clear on the record that no such quote was found within McClung and that the

statement made above is only the Applicant's interpretation/summary of only part of what McClung discloses on Col. 2 Lines 14-27 and 53-56."

(C) The Examiner states on pages 19-20 of the present Office Action that:

[...]

The Examiner again points out that Thakur was not used to teach a user entering transaction information, but to show that one of ordinary skill in the art would have realized that a consumer can perform a transaction with a vendor, provide information to a host system, and have the host system be in communication with the vendor in order to monitor any transactions made between the vendor and consumer in the event that a refund or discount is applicable. Moreover, the Examiner also asserts that it would have been well within the ability of one having ordinary skill in the art that a computer based system is fully capable of receiving input and processing that input regardless of what the input is directed to. In other words, one of ordinary skill in the art would have realized that the type of information being transmitted within the system of Thakur is nonfunctional descriptive material and the type of data adds little, if anything, to the system's structure.

One of ordinary skill in the art would have also realized that it is common knowledge that computer systems are extremely versatile and that they can be placed in different environments and communicate with other computers if the computers are networked. The Examiner asserts that one of ordinary skill would have realized that the applicant's invention is no different from the invention disclosed by the combination of McClung and Thakur since all the applicant is doing is providing at least two computer systems, which are not even claimed, and having them communicate with each other, as well as taking in input by some user, which is taught by McClung, and relaying the inputted information to the other computer, which is taught by Thakur. The fact that the information is regarding a transaction or a price protection is completely irrelevant, i.e. nonfunctional. One of ordinary skill in the art would only be concerned whether the two computer systems are able to receive input from a user, which any computer off the shelf is fully capable of doing, processing the information and transmitting the information to another computer, wherein the second computer would process the received information and transmit any results from the processing back to the first computer.

With that said, the Examiner again asserts that anyone having ordinary skill in the art would have been fully aware that networks of computers do this on a daily basis and that the only difference is that the applicant is claiming price protection. Looking upon the combination of McClung and Thakur one of ordinary skill in the art would have taken what is already known about computer networks and found it obvious that price protection guarantee could be

incorporated since all that is being done is substituting the kind of information that is being transmitted.

To argue that the, "...the combination of McClung and Thakur do not allow one of ordinary skill in the art to allow a user to provide transaction information to the host system," is incorrect. Neither McClung nor Thakur, separately or in combination, prevent a user from providing transaction information. As a matter of fact, at least McClung clearly discloses that, "The consumer can, via an interactive Internet site (e.g. of the host system, the vendor, other systems, and/or the manufacturer) provide the sales and product information to activate the warranty (McClung Col. 2 Lines 59 - 63).

With what has been known in the art at the time of the invention it would have been well within the skill of one of ordinary skill in the art that providing transaction information to a host system is very common. Moreover, looking upon the teachings of the combination of McClung and Thakur, wherein the combination discloses price protection guarantee using a computer network, it would have been very obvious that transaction information had to have been inputted because the system would never bother looking for any price protection refunds, as can be seen in at least McClung Cot. 2 Lines 59 - 63).

In other words, a computer by itself would never be capable of doing anything unless someone inputs a command to cause the computer to do something. In this case, it is asserted that a user had to have provided transaction information to the host system because without this information how would the system ever determine if a user is entitled to a price guarantee.

The Applicant respectfully disagrees with the Examiner's statements copied above, especially that statement of:

One of ordinary skill in the art would have also realized that it is common knowledge that computer systems are extremely versatile and that they can be placed in different environments and communicate with other computers if the computers are networked. The Examiner asserts that one of ordinary skill would have realized that the applicant's invention is no different from the invention disclosed by the combination of McClung and Thakur since all the applicant is doing is providing at least two computer systems, which are not even claimed, and having them communicate with each other, as well as taking in input by some user, which is taught by McClung, and relaying the inputted information to the other computer, which is taught by Thakur. The fact that the information is regarding a transaction or a price protection is completely irrelevant, i.e. nonfunctional. One of ordinary skill in the art would only be concerned whether the two computer systems are able to receive input from a user, which any computer off the shelf is fully capable of doing, processing the information and transmitting the information to another computer, wherein the second computer

would process the received information and transmit any results from the processing back to the first computer.

With that said, the Examiner again asserts that anyone having ordinary skill in the art would have been fully aware that networks of computers do this on a daily basis and that the only difference is that the applicant is claiming price protection. Looking upon the combination of McClung and Thakur one of ordinary skill in the art would have taken what is already known about computer networks and found it obvious that price protection guarantee could be incorporated since all that is being done is substituting the kind of information that is being transmitted.

The presently claimed invention is not just merely providing price protection or just merely transferring transaction data between computer systems or websites. The presently claimed invention provides a unique and novel way of obtaining data and providing price protection. For example, the previously presented claims of the presently claimed invention recite:

receiving, by a first web site, information directly from a user, the information being entered by the user at the first web site via a user interface at the first website, wherein the information is associated with a configuration of a product and/or service that was purchased by the user from a second web site different from the first web site, wherein the configuration of the product and/or service includes a plurality of configurable components each associated with a different purchase price, wherein the information includes a total purchase price of the product and/or service, wherein the total purchase price comprises the purchase price of each configurable component of the configuration of the product and/or service, and wherein the second web site offers purchase price protection for the purchased configuration of the product and/or service, wherein the user also enters a type of purchase price protection offered by the second website, and wherein the user submits the information to the first web site by selecting a button on the user interface;

initiating, by the first web site, the purchase price protection offered by the second website as indicated by the user for the purchased configuration of the product and/or service in response to the user selecting the button on the user interface;

determining, by the first web site, a current total purchase price for the

purchased configuration of the product and/or service at the second web site, wherein the determining includes accessing the second website by the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify the current total purchase price of the purchased product and/or service configuration;

[...]

The information being received by the first website is not just merely transactional data, but data that has been obtained from a “a configuration of a product and/or service that was purchased by the user from a second web site different from the first web site, wherein the configuration of the product and/or service includes a plurality of configurable components each associated with a different purchase price, wherein the information includes a total purchase price of the product and/or service, wherein the total purchase price comprises the purchase price of each configurable component of the configuration of the product and/or service”. This is clearly different than typical transaction information associated with a product that McClung teaches.

The purchase price protection is offered by the presently claimed invention by “determining..., a current total purchase price for the purchased configuration of the product and/or service at the second web site, wherein the determining includes accessing the second website by the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify the current total purchase price of the purchased product and/or service configuration”.

As can be seen, the presently claimed invention is not just merely passing transaction information and pricing information between websites or computers, but has a novel and unique way of obtaining the pricing information at other websites. This is accomplished, in one embodiment, by a computer hosting associated with a first website accessing the second website by the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify the current total purchase price of the purchased product and/or service configuration”. One of ordinary skill in the art would not find the above elements non-functional or obvious because the claims clearly recite how this information is obtained

(function) and “a computer hosting associated with a first website accessing the second website by the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify the current total purchase price of the purchased product and/or service configuration” was likely not well known at the time the present application was filed.

Therefore, the Applicant respectfully requests that the Examiner provide patents and/or publications (i.e., concrete evidence) or file an affidavit as is allowed under MPEP §707 that support the Examiner’s assertion that:

One of ordinary skill in the art would have also realized that it is common knowledge that computer systems are extremely versatile and that they can be placed in different environments and communicate with other computers if the computers are networked. The Examiner asserts that one of ordinary skill would have realized that the applicant's invention is no different from the invention disclosed by the combination of McClung and Thakur since all the applicant is doing is providing at least two computer systems, which are not even claimed, and having them communicate with each other, as well as taking in input by some user, which is taught by McClung, and relaying the inputted information to the other computer, which is taught by Thakur. The fact that the information is regarding a transaction or a price protection is completely irrelevant, i.e. nonfunctional. One of ordinary skill in the art would only be concerned whether the two computer systems are able to receive input from a user, which any computer off the shelf is fully capable of doing, processing the information and transmitting the information to another computer, wherein the second computer would process the received information and transmit any results from the processing back to the first computer.

With that said, the Examiner again asserts that anyone having ordinary skill in the art would have been fully aware that networks of computers do this on a daily basis and that the only difference is that the applicant is claiming price protection. Looking upon the combination of McClung and Thakur one of ordinary skill in the art would have taken what is already known about computer networks and found it obvious that price protection guarantee could be incorporated since all that is being done is substituting the kind of information that is being transmitted.

Applicant respectfully suggests that the Examiner has failed to meet his burden of making the prima facie case of obviousness.

### **Claim Rejections - 35 USC §112**

(D) The Examiner rejected claims 15-20 under 35 U.S.C. §112, second paragraph. In particular, the Examiner states:

Claims 15-20 are rejected under 35 U.S.C. 112, second paragraph, because it is uncertain how the system is performing the various claimed functions. Specifically, the Examiner asserts that the applicant has failed to provide the necessary structural components that perform the various processes of the disclosed claims. Moreover, the applicant has also claimed-

“ ... a processor for determining whether the user is due a purchase price protection refund based on the current total purchase price on the second web site...”

However, the Examiner is uncertain how a processor can determine the above mentioned process. That is to say, the Examiner asserts that a processor by itself without any accompanying hardware is unable to determine whether the user is due a purchase price protection refund based on the current total purchase price on the second web site. The determination of this step would be requested by a software program and executed by the processor. Even still, the processor itself would not be able to execute the determination alone.

In regards to claim 20, the Examiner is uncertain as to how the entire refund is sent directly to the user. That is to say, claim 15 clearly claims that the refund is divided into at least two portions, wherein one portion is sent directly to the user and the remainder of the refund as a fee associated with the user. Consequently, the Examiner asserts that the entire refund can never be sent directly to the customer since at least one portion of the entire refund is used to pay for fees associated with the user.

Moreover, as currently disclosed by claim 20 one of ordinary skill in the art would have also understood that the transmitter is also sending another refund on top of the portion of the refund that was sent as disclosed by claim 15. As a result, it is uncertain whether claim 20 is sending another refund.

The Applicant has amended claim 15 to more clearly recite:

at least a first computer system associated with a first web site, wherein the at least first computer system receiv[ing]es information directly from a user, the information being associated with a configuration of a product and/or service that was purchased by the user from a second web site, associated with at least a second computer system, different from the first web site, wherein the configuration of the product and/or service includes a plurality of configurable components each associated with a different purchase price, wherein the information includes a total purchase price of the product and/or service, wherein the total purchase price comprises the purchase price of each configurable

component of the configuration of the product and/or service, and wherein the second web site offers purchase price protection for the purchased configuration of the product and/or service, wherein the information also includes a type of purchase price protection offered by the second website and a notification type selected by the user indicating how the user is to be notified of a refund from the purchase price protection, and wherein the first web site comprises a user interface that is used by the user to enter the information, the user interface including at least one button that is selected by the user for submitting the information to the first web site, wherein the first web site at least first computer system initiates the purchase price protection offered by the second website as indicated by the user for the purchased configuration of the product and/or service in response to the user selecting the button on the user interface;

a spider associated with the at least first computer system for determining a current total purchase price on the second web site for the product and/or service, wherein the determining includes accessing the second website by the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify the current total purchase price of the purchased product and/or service configuration;

a processor at the at least first computer system executing instructions [[for]] that determin[[ing]]e whether the user is due a purchase price protection refund based on the current total purchase price on the second web site; and

a transmitter at the at least first computer system for sending directly to the user based on the notification type selection entered by the user an indication indicating that the purchase price protection refund is due, wherein the transmitter is further for sending a portion of the refund directly to the user and keeping a remaining portion of the refund as a fee associated with the user.

As can be seen, the presently claimed invention now more clearly recites that the first and second websites are associated with computer systems and that the computer system(s) associated with the first website performs the elements of the claim 15, which provides sufficient structure to overcome the rejection under 35 U.S.C. §112, second paragraph.

Also, claim 15 now more clearly recites that the processor is executing instructions that determine “whether the user is due a purchase price protection refund based on the current total purchase price on the second web site”, which clarifies claim 15.

Claim 20 has been cancelled.

Accordingly, the Applicant submits that the rejection under 35 U.S.C. §112, second paragraph has been overcome and should be withdrawn.

### **Claim Rejections - 35 USC §101**

(E) The Examiner rejected claims 1-20 under 35 U.S.C. §101. The Applicant respectfully points out that claims 3, 10, and 17 were cancelled in the previous Response with Amendment.

With respect to claims 1-7, the Examiner states that these claims do not fall within a statutory class of claims. Claim 1 (and any affected dependent claim) has been amended to recite that “at least a first computer system associated with the first web site” performs the method, which clearly places claims 1-7 within a statutory class of claims. Accordingly, the rejection of claims 1-7 under 35 U.S.C. §101 has been overcome and should be withdrawn.

With respect to claims 8-14, the Applicant has amended claim 8 to more clearly recite “A computer program product comprising computer instructions for operating on at least one web site for offering purchase price protection for a product and/or service, the computer program product comprising: a storage medium readable by a processing circuit and storing instructions for execution by the processing circuit for performing a method comprising:...” Accordingly, the rejection of claims 8-14 under 35 U.S.C. §101 has been overcome and should be withdrawn.

With respect to claims 15-20, the Examiner states that claims 15-20 do not recite any structural components. Amended claim 15 has already been copied above, which shows that at least a first computer system comprises the components included within claims 15-20. Accordingly, sufficient structure is shown in claims 15-20 and the Applicant respectfully submits that the rejection of claims 15-20 under 35 U.S.C. §101 has been overcome and should be withdrawn.

### **Claim Rejections - 35 USC §103**

The Examiner rejected claims 1-20 under 35 U.S.C. §103(a) as being unpatentable over McClung, III, (U.S. Pat. No. 7,107,225 B1) in view of Thakur et al. (U.S. Patent Pub 2002/0194069). The Applicant respectfully points out that claims 3, 10, and 17 were cancelled in the previous Response with Amendment. Claim 20 has been cancelled in this Response with Amendment, thereby rendering the rejection of claim 20 under 35 U.S.C. §103(a) moot.

(F) With respect to claims 1, 8, and 15, the Examiner states:

McClung discloses a method for offering purchase price protection for a product and/or service, the method comprising the steps of:

receiving, by a first web site, information directly from a user, the information being entered by the user at the first web site via a user interface at the first website, wherein the information is associated with a configuration of a product and/or service that was purchased by the user from a second web site different from the first web site, wherein the information includes a total purchase price of the product and/or service, and wherein the vendor offers purchase price protection for the purchased configuration of the product and/or service, wherein the user also enters a type of price protection offered by the second website, and wherein the user submits the information to the first web site by selecting a button on the user interface (Col. 2 Lines 14 - 27, 53 - 56; Col. 4 Lines 8 - 30; Col. 5 Lines 41 - 54); (Claim 8) the user also entering a notification type selection indicating how the user is to be notified of a refund from the purchase price protection (Col. 2 Lines 60 - 65 wherein the user can log on to the site to receive the notification or wait by having the host system contact the user using the providing contact information, if any information was ever provided. That is to say, the system's default is to notify them through the web site unless another method has been provided);

The Applicant points out that McClung at Col. 2 Lines 14 - 27, 53 - 56; Col. 4 Lines 8 - 30; Col. 5 Lines 41 – 54 merely teaches “an item” that has been purchased. Nowhere does McClung teach or suggest “a configuration of a product”. Accordingly, the presently claimed invention distinguishes over McClung for at least these reasons.

Also, nowhere does McClung teach or suggest that a user “enters a type of price protection offered by the second website”. The Examiner is pointing to areas of McClung that just merely state that price protection is performed and how price protection is being performed. Nowhere does McClung teach or suggest that a user “enters a type of price protection offered by the second website”. Accordingly, the presently claimed invention distinguishes over McClung for at least these reasons.

The Examiner also states that McClung teaches:

initiating, by the first web site, the purchase price protection offered by the second website as indicated by the user for the purchased configuration of the

product and/or service in response to the user selecting the button on the user interface (Col. 2 Lines 14-27);

determining, by the first web site, a current total purchase price for the purchased configuration of the product and/or service at the second web site, wherein the determining includes accessing the second website by the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify the current total purchase price of the purchased product and/or service configuration (Column 2 Lines 19 - 23; see also explanation below regarding total price = > (price of the components));

However, nowhere does McClung teach or suggest a configuration of a product. McClung merely states an item that is purchased. The citations given by the Examiner fail to even suggest that McClung teaches a configuration of a product or offering purchase price protection for a configuration, or “accessing the second website by the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify the current total purchase price of the purchased product and/or service configuration”.

McClung is absolutely silent on “accessing the second website by the at least first computer system associated with the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify the current total purchase price of the purchased product and/or service configuration”. For example, the Examiner states that McClung teaches this claim element at col. 2, lines 19-23, however, this section of McClung merely states:

In one aspect, the vendor (and/or host system or similar system) monitors competitors on a real time basis and provides the consumer at the vendor's location any better price available than at any competitor for the same item (or service)

Nowhere does this teaching of McClung teach or suggest “accessing the second website by the at least first computer system associated with the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify the current total purchase price of the purchased product and/or service configuration”. Accordingly, the presently claimed invention distinguishes over McClung for at least these reasons as well.

The Examiner further states that McClung teaches:

(Claim 15) wherein the transmitter is further for sending a portion of the refund directly to the user and keeping a remaining portion of the refund as a fee associated with the user (Col. I Lines 47 - 52, 64 - 67; wherein it would have been obvious to one of ordinary skill in the art that the host system is in communication with the vendors and when a refund becomes available the host system will handle the making available of the refund to the customer and credit the amount to the customer's account and wherein it is common sense that business have an associated fee for carrying out said service).

The Applicant disagrees with the Examiner's assertion that "it would have been obvious to one of ordinary skill in the art that the host system is in communication with the vendors and when a refund becomes available the host system will handle the making available of the refund to the customer and credit the amount to the customer's account and wherein it is common sense that business have an associated fee for carrying out said service" The Applicant contends that this is not well known in view of the claim as a whole, and requests that the Examiner support these assertions by providing concrete evidence such as citing to prior art references and/or filing an affidavit as is allowed under MPEP §707, citing 37 CFR 1.104(d)(2), and as specified in MPEP §2144.03. Accordingly, the presently claimed invention distinguishes over McClung for at least these reasons as well.

**(G) The Examiner correctly states that McClung fails to disclose:**

wherein the configuration of the product and/or service includes a plurality of configurable components each associated with a different purchase price and wherein the total purchase price comprises the sum of each component's price; and

whether a consumer performed the purchase at the host system or at the vendor's web site.

The Examiner goes on to state:

Regarding the configuration of the product and/or service includes a plurality of configurable components each associated with a different purchase price and wherein the total purchase price comprises the sum of each components price the Examiner asserts that one having ordinary skill in the art at the time the invention was made that there are a variety of types of products, including products that are made of various components. For example, it is extremely old and well known that computer system are made of several components, such as video cards, motherboards, processors, hard drives, and etc., and that each computer component has an associated price. In other words, the total price of the

computer system is dependent on the price of each component that makes up the computer system.

With that said, it would have also been obvious for one of ordinary skill in the art looking upon the teachings of McClung's price guarantee that when determining the current total purchase price for the purchased configuration would include accessing the second website where the product was purchased and searching the current price of each component in order to determine the total price.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention that a product and/or service can include a plurality of configurable components each associated with a different purchase price and wherein the total purchase price comprises the sum of each component's price.

First of all, the Examiner stated in the Office Action, that McClung **does** teach "accessing the second website where the product was purchased and searching the current price of each component in order to determine the total price", but subsequently in the Office Action the Examiner appears to contradict the previous statement by saying one of ordinary skill in the art would find it obvious that McClung's price protection would include this.

However, all that McClung teaches is that an item that a person purchased is monitored at a vendor. One of ordinary skill in the art would not find the claim element at issue obvious in view of this teaching of McClung, because McClung does not even suggest configurations or an ability of the price protection system to select components at a second website to create the configuration purchased by a person that to determine if a refund is due to the person.

Furthermore, the Applicant requests that the Examiner provide concrete evidence such as prior art references or an affidavit as under MPEP §707, citing 37 CFR 1.104(d)(2), and as specified in MPEP §2144.03 to support the Examiner's assertions that:

Regarding the configuration of the product and/or service includes a plurality of configurable components each associated with a different purchase price and wherein the total purchase price comprises the sum of each components price the Examiner asserts that one having ordinary skill in the art at the time the invention was made that there are a variety of types of products, including products that are made of various components. For example, it is extremely old and well known that computer system are made of several components, such as video cards, motherboards, processors, hard drives, and etc., and that each computer component has an associated price. In other words, the total price of the

computer system is dependent on the price of each component that makes up the computer system.

Accordingly, for the reasons stated above, the presently claimed invention distinguishes over McClung for at least these reasons.

With respect to Thakur, the Examiner mainly relied on McClung and “well-known” statements to reject claims 1, 8, and 15 and used Thakur to teach a host system that performs the method of McClung.

Thakur merely teaches that a user enters information such as addresses and phone numbers that allow the host system to determine a pertinent geographic area for a user to provide a user with relevant coupons. The only purpose taught in Thakur for a user logging into the host system is to enter geographic information and obtain coupon information.

Accordingly, McClung and Thakur either taken individually or in any combination with each other does not teach or suggest:

receiving, by at least a first computer system associated with a first web site, information directly from a user, the information being entered by the user at the first web site via a user interface at the first website, wherein the information is associated with a configuration of a product and/or service that was purchased by the user from a second web site different from the first web site, wherein the configuration of the product and/or service includes a plurality of configurable components each associated with a different purchase price, wherein the information includes a total purchase price of the product and/or service, wherein the total purchase price comprises the purchase price of each configurable component of the configuration of the product and/or service, and wherein the second web site offers purchase price protection for the purchased configuration of the product and/or service, wherein the user also enters a type of purchase price protection offered by the second website, and wherein the user submits the information to the first web site by selecting a button on the user interface;

initiating, by the at least first computer system associated with the first web site, the purchase price protection offered by the second website as indicated by the user for the purchased configuration of the product and/or service in response to the user selecting the button on the user interface;

determining, by the at least first computer system associated with the first web site, a current total purchase price for the purchased configuration of the product and/or service at the second web site, wherein the determining includes accessing the second website by the at least first computer system associated with

the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify the current total purchase price of the purchased product and/or service configuration;

determining, by the at least first computer system associated with the first web site, whether the user is entitled to a purchase price protection refund based on the current total purchase price at the second web site; and

the at least first computer system associated with the first web site sending directly to the user an indication indicating that the user is entitled to the purchase price protection refund.

Therefore, Applicant believes that neither McClung, Thakur, nor any combination thereof, teaches or suggests the presently claimed invention as recited for claims claims 1, 8, and 15. The Examiner should withdraw the rejection of these claims.

(H) Claims 2, 4-7, 9, 11-14, 16, and 18-19 depend from claims 1,8, and 15, respectively, and because dependent claims recite all the limitations of the independent claim, it is believed, for this additional reason, that dependent claims 2, 4-7, 9, 11-14, 16, and 18-19, also recite in allowable form.

Accordingly, in view of the remarks above, in view of the amendments to Claims 1, 5, 6, 8, 11, and 15, and because the teachings of McClung and Thakur each taken individually and/or in any combination thereof does not teach, anticipate, or suggest, the presently claimed invention, the Applicant believes that the rejection of claims 1-2, 4-9, 11-16, and 18-19 under 35 U.S.C. §103(a) has been overcome. The Examiner should withdraw the rejection of these claims.

**Conclusion**

The foregoing is submitted as full and complete response to the Office Action mailed November 14, 2008. It is believed that the application is now in condition for allowance or at least in better condition for appeal. Allowance of claims 1-2, 4-9, 11-16, and 18-19, is respectfully requested.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim, unless the Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account No.: **50-1556**.

**PLEASE CALL the undersigned attorney at (561) 989-9811, should the Examiner believe a telephone interview would help advance prosecution of the application.**

Reconsideration, re-examination, and allowance of the present claims are requested.

Respectfully submitted,

Date: March 16, 2009

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